instance would be to reason that the parties intended a monogamous union, if any. The theory of the *lex loci* affords a simpler reason : the Hindu submitted to the law of England, that is, to monogamy.[22]

HEIRLOOMS AND DISPOSITIONS OF PERSONALTY TO FOLLOW LIMITATIONS OF REALTY. — Future limitations of chattels personal may be effected in England by will, and in this country either by deed or by will.[1] The nature of the interest so created depends on the nature of the interest given the particular tenant. The early English cases held that a gift to A for life gave him the absolute title,[2] and that, consequently, any succeeding gift was executory, and so within the operation of the rule against perpetuities. But, as the law developed, it was seen that there was no reason why, on a gift to A for life, then to B in fee, B's interest should not be treated as vested: such accordingly became the English law,[3] A enjoying the use and occupation only. This is probably the American law.[1] Unfortunately, the law in England seems to have returned to its original conception, and B's interest is today treated as executory.[4]

Such chattels as are proved by special custom to go to the heir, and a very restricted list of particular chattels, like armor, pennons, ensigns of honor, are called heirlooms.[5] They are transferable by the present owner during life,[6] but a bequest can be avoided by the person to whom the realty has descended or been devised.[7] They follow the rules of realty by operation of law. With this as a guide-post the English courts have decided that if ordinary, non-consumable chattels are given to go along with certain realty "as heirlooms," or "so far as the rules of law or equity permit," each succeeding life-tenant of the realty takes only a life interest in the chattels, and the absolute ownership vests in the first tenant-in-tail on his birth; [8] for there can be no entail of personalty. In reality this is inconsistent with the theory that a gift for life of a chattel carries the absolute interest, since a book, picture, or kitchen chair is not made an heirloom by calling it one.[9] It is either an established exception to the present English rule, or proves

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[22] The American courts recognize the marriage of white and Indian, despite the tribal custom of polygamy. 2 Beale, Cas. on Conf. of Laws, 80 *n.*

[1] Gray, Rule Perp., 2 ed., §§ 91, 88, 854. The law of North Carolina is *contra* as to deeds. Cutlar *v.* Spillar, 2 Hayw. (N. C.) 130. A recent writer believes that such future limitations in England can be created by deed as well as by will. Mr. David T. Oliver in 24 L. Quar. Rev. 341, 432.

[2] Bro. Ab., Devise, 13. For conflicting opinions as to the ancient reason for this, see 3 HARV. L. REV. 315; 14 *ibid.* 408.

[3] 2 Bl. Comm. 398; Hoare *v.* Parker, 2 T. R. 376; 14 HARV. L. REV. 417–420. As to chattels real, see Gray, Rule Perp., 2 ed., § 817 *et seq.*

[4] *In re* Tritton, 6 Morr. Bank. Cas. 250. But see 24 L. Quar. Rev. 431.

[5] Williams, Executors, 10 ed., 545–549; 2 Bl. Comm. 17, 428; Corven's Case, 12 Co. 105. *Cf.* Hill *v.* Hill, [1897] 1 Q. B. 483, 494–496. Blackstone says the word is derived from the Saxon "loom," meaning limb or member, and so signifies a limb or member of the inheritance. 2 Bl. Comm. 427. Heirlooms should be carefully distinguished from fixtures.

[6] 2 Bl. Comm. 429. See Cro. Car. 344.

[7] Co. Lit., 18 b, 185 b; Tipping *v.* Tipping, 1 P. Wms. 730; Williams, Pers. Prop., 15 ed., 128.

[8] Scarsdale *v.* Curzon, 1 J. & H. 40; *In re* Fothergill's Estate, [1903] 1 Ch. 149. The same rule applies to trust gifts.

[9] See Gray, Rule Perp., 2 ed., § 363 n., explaining the difference between the legal and popular meaning of the word. *Cf.* Haven *v.* Haven, 181 Mass. 573, 578.

it unsound. The testator's intention, however, cannot extend beyond the first tenant in tail, for here the personalty and the realty must take different paths. On the tenant's death the one goes to his executor, the other to the next heir of the body.[10]

In order to prevent the separation where the tenant in tail dies during minority, a clause is often inserted suspending the vesting of the chattel title until such tenant becomes twenty-one. This provision is respected, and it does not of itself violate the rule against remoteness.[11] If the tenant has reached twenty-one, but predeceases the last life-tenant, the same undesired separation must occur. To prevent this the courts require a very clear expression of intention that the chattels are not to vest in a tenant in tail who has never had possession of the realty.[12] In a recent case the chattels were to be "used, held, and enjoyed" by the person for the time being entitled to the mansion house, and a tenant in tail under twenty-one was to have the "use and benefit" of them until the title vested on his majority. It was held not sufficiently clear that possession was meant to be a necessary incident to the vesting of title. *In re Lord Chesham's Trusts*, 25 T. L. R. 213 (Eng., Ch., Jan. 12, 1909). This seems rather severe, though in line with earlier decisions.[13]

COLLATERAL ATTACK UPON THE DECREE OF A PROBATE COURT. — The decree or judgment of a court can be collaterally attacked only when it has no jurisdiction over the proceedings involved;[1] otherwise the judgment or decree, however erroneous, is merely voidable by direct appeal.[2] Furthermore, this collateral attack on jurisdiction is allowable only when the record discloses the absence of jurisdiction:[3] if the record is silent as to the necessary facts, jurisdiction will be presumed as a matter of law;[4] and a statement of the facts in the record will be conclusive.[5]

By the prevailing opinion a probate court is one of general jurisdiction,[6] and, properly speaking, there are two facts necessary to give it jurisdiction: (1) the testator or intestate must be dead; (2) and the particular probate court in question must be the one entitled to adjudicate. (1) If we apply the general rule of collateral attack to the first of these facts, we may have

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10 See Scarsdale *v.* Curzon, *supra;* Williams, Executors, 10 ed., 549.

11 Christie *v.* Gosling, L. R. 1 H. L. 279; Martelli *v.* Holloway, L. R. 5 H. L. 532; Gray, Rule Perp., 2 ed., § 367, where the reason is given that the provision is applicable only to those who might otherwise have taken, viz., tenants in tail by purchase.

12 Potts *v.* Potts, 3 J. & L. 353, 369; *In re* Fothergill's Estate, *supra.*

13 Foley *v.* Burnell, 1 Bro. C. C. 274.

1 *In re* Sawyer, 124 U. S. 200; Wetmore *v.* Parker, 52 N. Y. 450.

2 White *v.* Crow, 110 U. S. 183; Comstock *v.* Crawford, 36 Wall. (U. S.) 396, 403.

3 Jester *v.* Spurgeon, 27 Mo. App. 477.

4 Huxley *v.* Harrold, 62 Mo. 516, 523.

5 Tucker, Treas. *v.* Sellers, 130 Ind. 514; Ward *v.* White, 66 Ill. App. 155.

6 The People *v.* Seelye, 146 Ill. 189, 222. Where a probate court is considered one of inferior jurisdiction, the only difference in the matter of collateral attack is, that no presumption as to jurisdiction will arise when the record is silent: the necessary facts must affirmatively appear, or the decree will be void. When, however, the record avers the necessary facts or discloses the want of them, the effect is the same as with regard to the decree of a court of general jurisdiction. The People *v.* Seelye, *supra.* See Carron *v.* Martin, 26 N. J. L. 594; Comstock *v.* Crawford, *supra.*